

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

VANESSA JEAN PRUITT, ADMINISTRATRIX OF
THE ESTATE OF CHARLIE E. PRUITT, DECEASED;
VANESSA JEAN PRUITT, MOTHER AND LEGAL
GUARDIAN OF ANGEL M. PRUITT, AN INFANT
UNDER THE AGE OF 18 YEARS; VANESSA JEAN
PRUITT, INDIVIDUALLY; AND TIMOTHY B. PRUITT,

Plaintiffs,

v.

Civil Action No. 03-C-136

Judge Irene Berger

WEST VIRGINIA DEPARTMENT OF PUBLIC SAFETY,
C.F. KANE, JOHN DOE I, JOHN DOE II, and
JOHN DOE III,

Defendants.

ORDER

The Court has reviewed the West Virginia Department of Public Safety's Motion for Summary Judgment, the Plaintiffs' opposition, and the Defendants' Response thereto. Together with the oral argument of counsel, and after careful review of the same, the Court finds Summary Judgment is appropriate. Specifically, the Court finds that the West Virginia Department of Public Safety is not a "person", as that term is defined for purposes of an action, pursuant to Section 1983. The Court finds the argument that it is actually the Department's insurer that is the real party, to be unpersuasive. Accepting that argument would essentially obliterate the definition of the term "person" as used in the statute for most all cases. Additionally even if the West Virginia Department of Public Safety was a "person" as defined for purposes of an action pursuant to Section 1983, the plaintiffs have failed to identity an official policy or custom of the West Virginia Department of Public Safety that caused a deprivation of plaintiffs' or plaintiffs' decedent's constitutional rights., nor has there been evidence offered which creates a genuine issue of material fact that the West Virginia Department of Public Safety was deliberately indifferent to any rights of the plaintiffs or plaintiffs'

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KANAWHA CO. CIRCUIT COURT

decedent, given the elements outlined in Shaw v. Stroud. Further, given the totality of the deposition testimony, the plaintiffs have failed to establish a genuine issue of material fact such that a reasonable jury could find in her favor. On the issue of failure to train and/or supervise against the West Virginia Department of Public Safety, moreover, the Doctrines of Judicial and Equitable Estoppel are not applicable to the facts of this case where a Prosecuting Attorney made certain statements before the Grand Jury. Thus the Court grants the Motion, preserving the plaintiffs' objection and exception.

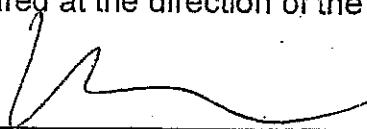
The Court has also reviewed Trooper Kane's Motion for Summary Judgment. After careful review of the same, the Court finds that whether this Defendant's actions were reasonable or justified under the facts of this case, are issues for the jury. Further, the Court will hear the evidence in this case before deciding whether the claims of intentional infliction of emotional distress and outrageous conduct should go to the jury. In other words, viewing this case in the light most favorable to the plaintiffs, the Court finds Summary Judgment on the claims against Trooper Kane to be inappropriate. The Court preserves Defendant Kane's objection and exception.

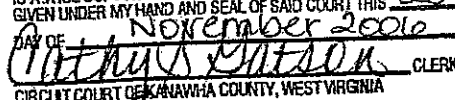
The Clerk is directed to forward a copy of the entered Order to all counsel of record.

ENTERED THIS 29th DAY OF December 2006.

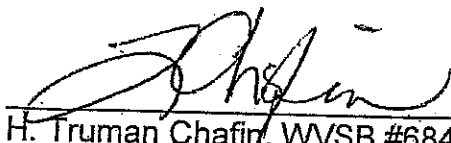

HONORABLE IRENE BERGER

Prepared at the direction of the Court by:


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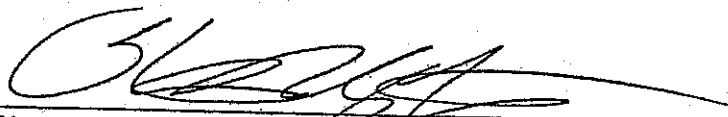
STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 28
DAY OF November 2006

CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Inspected and approved by:



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